



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 27, 1994

Mr. Tom Garner, Jr.  
Law Office of Garner, Roberts & Roberts, L.L.P.  
P.O. Drawer J  
Port Lavaca, Texas 77979

OR94-277

Dear Mr. Garner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24892.

The Montgomery Independent School District (the "school district") received two requests for the lesson plans of four school district teachers. You contend that the requested information is excepted from required public disclosure under section 552.122 of the Government Code.

We note that in the past legislative session the Open Records Act, formerly V.T.C.S. article 6252-17a, was repealed and subsequently codified in the Government Code at chapter 552. Acts 1993, 73d Leg., ch. 268, §§ 1, 46. Section 552.122 provides that:

- (a) A curriculum objective or test item developed by an educational institution that is funded wholly or in part by state revenue is excepted from [required public disclosure].
- (b) A test item developed by a licensing agency or governmental body is excepted from [required public disclosure].

However, the statutory predecessor to section 552.122 of the Government Code, V.T.C.S. article 6252-17a, section 3(a)(22), was amended during the same legislative session. Acts 1993, 73d Leg., ch. 347, § 8.30. The repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code. Gov't Code § 311.031(c). The amendment is preserved and given effect as part of the newly enacted code. *Id.*

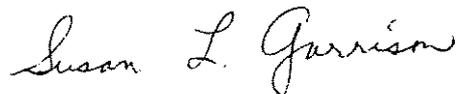
Section 3(a)(22) was amended to except the following:

test items developed by educational institutions that are funded wholly or in part by state revenue and test items developed by licensing agencies or governmental bodies.

Acts 1993, 73d Leg., ch. 347, § 8.30. Your contention that the requested information is excepted from public disclosure is based on the "curriculum objective" language that is no longer part of the Open Records Act. The lesson plans clearly do not constitute "test items." Accordingly, the school district may not withhold the requested information under V.T.C.S. article 6252-17a, section 3(a)(22) (as amended without reference to the repeal).<sup>1</sup>

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Open Government Section

SLG/LBC/rho

Ref.: ID# 24892

Enclosures: Submitted documents

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<sup>1</sup>Although the requested information does not appear to contain the names of any students, we remind the school district that information directly related to a student may be released only in compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g.